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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE, Plaintiff and Respondent, v. VICTOR FERN TREVINO, Defendant and Appellant.	A100001 (San Mateo County Super. Ct. No. 42830)

Defendant claims that the trial court lost jurisdiction under Penal Code section 1203.2a[1] to sentence him. He claims that his letter to the district attorney, which included a form for requesting a trial under section 1381, triggered the 60-day limitation under section 1203.2a and the court sentenced him after the time had expired. We conclude that the statute does not provide for notice to the court by the district attorney and therefore the 60-day time limit was not triggered and the court had jurisdiction to execute defendant's sentence.

BACKGROUND

On May 26, 1998, the San Mateo County District Attorney filed an information charging defendant with kidnapping for the purpose of robbery (§ 209, subd. (b)), robbery (§ 212.5, subd. (b) or (c)), false imprisonment (§ 236), threat to commit a crime resulting in death or great bodily injury (§ 422), dissuading a witness (§ 136.1, subd.

[1] All further unspecified code sections refer to the Penal Code.

(c)(1)), auto theft (Veh. Code, § 10851), misdemeanor battery (§ 243, subd. (e)), and misdemeanor defacing of property (§ 594). The information further alleged that defendant had one prior strike conviction (§§ 667, subd. (a) & 1170.12) and served one prior prison term (§ 667.5, subd. (b)).

On October 26, 1998, defendant pleaded guilty to one count of robbery and admitted the prior strike conviction in exchange for the dismissal of the remaining charges and a request to the court to dismiss his 10-year prison sentence pending his successful completion of a minimum two-year Delancey Street Program or one year in county jail. On January 20, 1999, the court suspended defendant's 10-year sentence and granted him a five-year probation. As a condition of probation, the court ordered him to serve one year in county jail modifiable to entry and completion of a two-year residential treatment program at Delancey Street.

On June 2, 1999, defendant's probation officer moved to revoke defendant's probation on the grounds that he had violated his probation by leaving the Delancey Street Program without approval on May 29, 1999.

In a letter dated February 4, 2002, defendant wrote to the San Mateo County District Attorney's office stating that he had been in state prison since 1999, serving a sentence of 67 years to life for crimes occurring in Santa Clara County. Defendant stated that he was willing to admit the probation violation and waive his right to be present at sentencing in return for a concurrent term. He completed and enclosed a section 1381 form demanding a "hearing and trial of said criminal action . . . ."

On February 27, 2002, the San Mateo County Superior Court ordered defendant to be transported from state prison to court so that he could be arraigned on the probation violation. Defendant appeared on the probation violation on March 11, 2002. Defendant requested and the court granted his request for a two-week continuance to hire counsel. On March 26, the court appointed counsel for defendant. Counsel waived further arraignment on the probation violation and the court continued the matter.

On May 14, 2002, defense counsel appeared on defendant's behalf. The court stated that defendant had requested to have his time run concurrent "with his very long sentence out of Santa Clara." Counsel responded that he needed "a couple of weeks" and the court continued the matter.

At the hearing on June 4, 2002, defense counsel stated that defendant "is in state prison and he hasn't exactly set a 1203.2[a], but he's set the equivalent of. . . ." Counsel stated that defendant is asking the court to treat it as a section 1203.2a. The court continued the matter to hear defendant's section 1203.2a motion.

Defendant filed a motion to dismiss his probation violation and vacate his 10-year suspended sentence pursuant to section 1203.2a. At the hearing on July 25, 2002, the court noted that it was "willing to bet" that someone had told it that defendant was in prison but the court was never officially notified of this. Counsel stated: "[Defendant] has written to me and said if he gets concurrent time, and he gets all those back credits to the day of the Santa Clara commitment then that's what he wants." The court denied the section 1203.2a motion. It found that defendant had made a written admission to the probation violation and therefore revoked and terminated his probation. The court sentenced defendant to a 10-year term in state prison to run concurrently with his Santa Clara County term.

Defendant filed a timely notice of appeal.

DISCUSSION

Defendant contends that the letter dated February 4, 2002 with the section 1381 form he sent to the district attorney triggered the jurisdictional limitations of section 1203.2a and the court lost jurisdiction under this statute to order execution of his sentence.[2] Section 1203.2a permits a defendant, who has been released on probation and

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[2] Section 1203.2a provides: "If any defendant who has been released on probation is committed to a prison in this state or another state for another offense, the court which released him or her on probation shall have jurisdiction to impose sentence, if no sentence has previously been imposed for the offense for which he or she was granted probation, in the absence of the defendant, on the request of the defendant made

through his or her counsel, or by himself or herself in writing, if such writing is signed in the presence of the warden of the prison in which he or she is confined or the duly authorized representative of the warden, and the warden or his or her representative attests both that the defendant has made and signed such request and that he or she states that he or she wishes the court to impose sentence in the case in which he or she was released on probation, in his or her absence and without him or her being represented by counsel.

"The probation officer may, upon learning of the defendant's imprisonment, and must within 30 days after being notified in writing by the defendant or his or her counsel, or the warden or duly authorized representative of the prison in which the defendant is confined, report such commitment to the court which released him or her on probation.

"Upon being informed by the probation officer of the defendant's confinement, or upon receipt from the warden or duly authorized representative of any prison in this state or another state of a certificate showing that the defendant is confined in prison, the court shall issue its commitment if sentence has previously been imposed. If sentence has not been previously imposed and if the defendant has requested the court through counsel or in writing in the manner herein provided to impose sentence in the case in which he or she was released on probation in his or her absence and without the presence of counsel to represent him or her, the court shall impose sentence and issue its commitment, or shall make other final order terminating its jurisdiction over the defendant in the case in which the order of probation was made. If the case is one in which sentence has previously been imposed, the court shall be deprived of jurisdiction over defendant if it does not issue its commitment or make other final order terminating its jurisdiction over defendant in the case within 60 days after being notified of the confinement. If the case is one in which sentence has not previously been imposed, the court is deprived of jurisdiction over defendant if it does not impose sentence and issue its commitment or make other final order terminating its jurisdiction over defendant in the case within 30 days after defendant has, in the manner prescribed by this section, requested imposition of sentence.

"Upon imposition of sentence hereunder the commitment shall be dated as of the date upon which probation was granted. If the defendant is then in a state prison for an offense committed subsequent to the one upon which he or she has been on probation, the term of imprisonment of such defendant under a commitment issued hereunder shall commence upon the date upon which defendant was delivered to prison under commitment for his or her subsequent offense. Any terms ordered to be served consecutively shall be served as otherwise provided by law.

"In the event the probation officer fails to report such commitment to the court or the court fails to impose sentence as herein provided, the court shall be deprived thereafter of all jurisdiction it may have retained in the granting of probation in said case."

thereafter committed to prison for another offense, to request the trial court that granted probation to revoke probation and order execution of sentence.

"'The purpose of section 1203.2a is to prevent a defendant from inadvertently being denied the benefit of . . . section 669 that sentences be concurrent unless the court exercises its discretion to order that a subsequent sentence be consecutive to a prior sentence. Before section 1203.2a was enacted, if the court that granted probation was unaware of a defendant's subsequent incarceration for another offense and had therefore failed to revoke probation, the defendant might serve the entire term for the other offense but still be subject, on revocation of probation, to serving the term for the offense for which he had been given probation.'" (*People v. Hall* (1997) 59 Cal.App.4th 972, 980 (*Hall*), quoting *In re White* (1969) 1 Cal.3d 207, 211, fn. omitted.)

"[S]ection 1203.2a provides for 3 distinct jurisdictional clocks: (1) the probation officer has 30 days from the receipt of written notice of defendant's subsequent commitment within which to notify the probation-granting court (2d par.); (2) the court has 30 days from the receipt of a valid, formal request from defendant within which to impose sentence, if sentence has not previously been imposed (3d par., 4th sentence); and (3) the court has 60 days from the receipt of notice of the confinement to order execution of sentence (or make other final order) if sentence has previously been imposed (3d par., 3d sentence). Failure to comply with any one of these three time limits divests the court of any remaining jurisdiction. (5th par.)" (*In re Hoddinott* (1996) 12 Cal.4th 992, 999.)

If the probation officer, prison warden, or a duly authorized representative from any state prison notifies the court of the probationer's confinement for the subsequent offense, the court has 60 days to order execution of sentence where the sentence had previously been imposed. (§ 1203.2a.) Defendant concedes that none of the statutorily designated persons notified the court of his incarceration for another offense. Defendant, however, maintains that the 60-day jurisdictional limit was triggered when the district attorney informed the court of his status because a district attorney "is certainly worthy of equal standing [to the probation officer, warden, or a representative of the prison] when it

comes to notifying a court of a defendant's status." He does not specify exactly when the district attorney notified the court, but asserts: "It appears that the District Attorney notified the court of appellant's status because the superior court ordered [defendant] transported from prison shortly thereafter."

We have already pointed out in *Hall* that it is well settled that "'[l]oss of jurisdiction over a convicted felon is a severe sanction which courts have been unwilling to apply unless the sentencing court's jurisdiction has been ousted by strict compliance with the statute. [Citations.]' [Citations.] In determining whether there has been strict compliance with the requirements of the statute, we start with the language of the statute itself. [Citation.] Principles of statutory construction direct us to construe the words of a statute in context, keeping in mind the purpose of the statute. [Citation.]" (*Hall, supra,* 59 Cal.App.4th at p. 981.)

Defendant maintains that his letter to the district attorney did not suffer the same problem that plagued the defendant in *Hall*. In *Hall*, we held that the trial court had not lost jurisdiction under section 1203.2a to sentence defendant, despite notice that defendant was incarcerated, because the notice and amended notice of probation did not specify that the incarceration was for a *subsequent* offense. (*Hall, supra,* 59 Cal.App.4th at p. 983.) In contrast, here, defendant's letter stated that he was serving a sentence of 67 years to life for a different offense.

Defendant, however, ignores our discussion in *Hall* that defendant's motion to dismiss pursuant to section 1381 did not satisfy the requirements under section 1203.2a. (*Hall, supra,* 59 Cal.App.4th at p. 984.) We concluded that the section 1381 form does not trigger the 60-day sentencing requirement since this statute addresses a defendant's right to a speedy trial, and applies solely to prisoners who have not been tried or sentenced. A section 1381 form cannot be used to challenge probation or sentencing issues when the trial court has already imposed the defendant's sentence. (*Hall*, *supra,* at p. 978, fn. 2.) More significantly, we held that defendant's motion pursuant to section 1381 did not set off the jurisdictional requirements of section 1203.2a because "[t]o

qualify under paragraph three of section 1203.2a, the notice must be from the probation officer or from the warden or other duly authorized representative of any prison. There is no provision for notice from a defendant to the court. Under the rule requiring strict compliance with the statute, we find [the defendant's] motion insufficient to invoke the 60-day jurisdictional time limit set forth in the third paragraph of section 1203.2a." (*Hall*, *supra,* at p. 984.)

Similarly, here, even presuming that the district attorney notified the court of defendant's incarceration for another offense after receiving defendant's letter and section 1381 form, the statute does not provide for notice from the district attorney to the court. Defendant argues that an "overly technical and formalistic interpretation" of the notification requirements, especially when the statute is so "convoluted" (see *In re Hoddinott, supra,* 12 Cal.4th at p. 1003, fn. 7), would deny him due process of law. Although the statute is not "a model of clarity" (*ibid.*), it is plain that the Legislature did not include a provision for notice to be provided by the district attorney. Since the statute is unambiguous in this regard, we reject defendant's claim that it violates his due process rights. Accordingly, in accordance with the rule of "strict compliance with the statute" (see, e.g., *Hall, supra,* 59 Cal.App.4th at p. 984), we affirm the trial court's finding that it had jurisdiction to revoke defendant's probation and execute the previously suspended 10-year sentence.[3]

DISPOSITION

The judgment is affirmed.

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[3] Since we are affirming on the basis that the court did not lose jurisdiction, we need not address or reach the People's argument that defendant waived time for sentencing and therefore cannot now challenge the trial court's jurisdiction.

Lambden, J.

We concur:

Kline, P. J.

Haerle, J.